

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK J. MULLINS and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Port Alsworth, AK

*Docket No. 01-1027; Submitted on the Record;
Issued January 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a right knee injury while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review.

On July 16, 1999 appellant, then a 40-year-old maintenance worker, filed a notice of traumatic injury claim, alleging that on April 15, 1999 he injured his right knee in the performance of his employment duties. Appellant stated that while he and coworker Bill Prater were hanging sheet rock, he stepped up onto a workbench, placing all his weight on his right knee and he heard a pop. The claim form contains a witness statement signed by Mr. Prater, stating that he heard appellant say that he felt a "pop" in his knee. Appellant stopped work on July 19, 1999 and returned on July 23, 1999. His claim form further indicates that he first sought medical treatment for his knee on July 19, 1999, when he underwent arthroscopic surgical repair of a right lateral meniscus tear.

By letter dated April 1, 1999, the Office advised appellant of the type of factual and medical evidence needed to establish his claim. The Office specifically requested a detailed description of how the injury occurred; the immediate effects of the injury and his immediate reaction; whether appellant sustained any other injury, either on or off duty, between the date of the injury and the date it was reported; whether appellant had a similar disability or symptoms before the injury; and the reason why appellant delayed in seeking medical attention and reporting the injury to his employer. The Office also requested a physician's opinion supported by medical rationale on the causal relationship between his disability and the injury as reported. Appellant was informed that his case would be held open for 30 days to submit additional evidence. He did not respond.

In a decision dated May 11, 2000, the Office denied appellant's claim as there was no evidence in the record to establish that appellant sustained a knee injury in the performance of duty, as required by the Federal Employees' Compensation Act.¹

By letter received October 20, 2000, appellant requested reconsideration of the Office's decision and submitted medical evidence in support of his claim. In a decision dated December 8, 2000, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that appellant has failed to establish that he sustained a right knee injury while in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed is causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident or engaged in the employment activities alleged to have occurred.⁴ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁶ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury, can also be evidence of the occurrence of the incident.⁷

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.¹⁰ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.¹¹

In this case, prior to the Office's May 11, 2000 decision, appellant did not submit any of the requested factual or medical evidence to support his claim. Therefore, the Office properly found that fact of injury had not been established and, that consequently, appellant had not established entitlement to compensation.

The Board further finds that the Office acted within its discretion in refusing to reopen appellant's claim for merit review.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹² Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹³

⁸ *Nathaniel Cooper*, 46 ECAB 1053 (1995); *Carmen Dickerson*, 36 ECAB 409 (1985).

⁹ *John J. Carlone*, *supra* note 5; see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Manuel Garcia*, 37 ECAB 767 (1986).

¹² 20 C.F.R. § 10.606(b).

¹³ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

In support of his request for reconsideration, appellant submitted medical evidence from his treating physician, Dr. Adrian B. Ryan, dating from July 19 through July 22, 1999. Appellant did not submit, however, any of the requested factual information explaining the circumstances of his claim and the reasons for his delay in filing. In light of the fact that he did not notify his supervisor of his injury, or file his claim until July 19, 1999, approximately three months after the injury is alleged to have occurred and continued to work until July 19, 1999, when he first sought medical treatment, this factual evidence is necessary to establish a *prima facie* case.

The Office is required to reopen a case on its merits when a claimant submits relevant evidence not previously considered or advances legal contentions not previously considered. Evidence that does not address the particular issue involved constitutes no basis for reopening a case.¹⁴ The medical evidence submitted by appellant, dating from three months after the alleged injury, is not relevant to the issue of whether the incident occurred as alleged. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for review of the merits.¹⁵

The decisions of the Office of Workers' Compensation Programs dated December 8 and May 11, 2000 are hereby affirmed.

Dated, Washington, DC
January 16, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

¹⁴ *Willie H. Walker, Jr.*, 45 ECAB 126 (1993).

¹⁵ The Board further notes that the medical evidence of record is also insufficient to establish the second prong of the fact of injury test, whether appellant's employment duties caused a personal injury. Dr. Ryan's treatment notes contain only the history of injury related by appellant and do not contain a rationalized medical opinion explaining the causal relationship between the alleged April 15, 1999 incident and the diagnosed condition. *Charles E. Burke*, 47 ECAB 185 (1995).